

ADVISORY OPINION NO. 97-06

Issued on March 6, 1997 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

City Manager

OPINION SOUGHT

Is it a violation of the Ethics Act if a City Sanitary Board compensates one of its members for services rendered to the Board as an interim employee?

FACTS RELIED UPON BY THE COMMISSION

State law requires that during a construction period a Sanitary Board must have at least one member who is a registered professional engineer. In the middle of a sewer project, the chief operator for the two wastewater treatment plants operated by a Sanitary Board retired due to health reasons. The Board was given little advance notice of the retirement.

The City Manager suggested that the Board retain its member who was also a professional engineer to provide liaison services during the hiring process and during the transition process until the new operator could demonstrate the ability to fulfill the job's duties. The Sanitary Board complied with that request.

The Board agreed to compensate its member/engineer for services provided, but no precise amount of compensation was established at the time of the decision. The member/engineer did not participate in the vote to use his services on an interim basis. The City Manager and the Board are concerned to establish that paying such compensation would not violate the Ethics Act.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

West Virginia Code 6B-1-2(c) states in pertinent part that...the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee

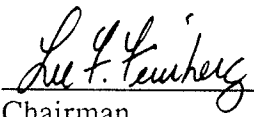
from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

ADVISORY OPINION

The Commission finds that the Sanitary Board would not violate the Ethics Act if it compensates its member/engineer for interim services rendered because there is no evidence under these facts that the member/engineer used his position on the Board to obtain the proposed payments. Rather, the action taken was a reasonable decision to minimize the impact of a potential disruption of the Board's activities and thereby protect the public interest during an unforeseen emergency.

In reaching this conclusion the Commission recognizes that in A.O. 91-16 it held that a member of a County Solid Waste Authority could not simultaneously serve as the paid Director of that Authority. However, that opinion was based upon a tacit consideration of WV Code 61-10-15 which imposes a total ban on financial interests in any contracts over which **county** public servants may have voice, influence or control. This case involves a **municipal** Sanitary Board and therefore the provisions of WV Code 61-10-15 would not apply.

The Commission does caution that pursuant to WV Code 6B-1-2(c) the member/engineer may not vote on the decision to set compensation for his services provided during this emergency situation.


Chairman